



15 September 2017

Chris Lidell, Director
American Technology Council
1600 Pennsylvania Ave, NW
Washington DC 20006

Via email: itmodernization@cio.gov

Dear Mr. Lidell:

Intellectual Property Owners Association (IPO) submits these comments in connection with the Request for Comment from the American Technology Council (ATC) regarding its Draft Report to the President on Federal IT Modernization.

IPO is a trade association representing companies and individuals in all industries and fields of technology who own or are interested in intellectual property rights. IPO's membership includes roughly 200 companies and more than 12,000 individuals who are involved in the association, either through their companies or as inventor, author, law firm, or attorney members. IPO membership spans more than 30 countries. IPO advocates for effective and affordable IP ownership rights and provides a wide array of services to members.

IPO generally supports the goal ATC articulates in its Draft Report to modernize the security and functionality of federal information technology (IT) and to improve on service delivery while using resources efficiently. However, IPO is concerned that the Draft Report's approach to shared services adoption fails to recognize that certain agencies might not be good candidates for participation in shared services initiatives for technical, policy, or legal reasons. We encourage ATC to develop criteria for identifying agencies that should be exempted from shared services initiatives and to update the discussion of legal considerations relevant to transitioning agencies to consolidated network infrastructures or shared services.

The agency with which IPO's members are most familiar is the U.S. Patent and Trademark Office (USPTO). Although IPO's members normally enthusiastically support efforts to improve and streamline the USPTO's IP-related services, including its human resources, information technology, and procurement functions, we are concerned that the implementation of a shared services model could cause interference with the USPTO's ability to continue to deliver services that meet the high standard its stakeholders expect, by tying it to a shared services program that limits its ability to seek out the best quality services or to retain current high quality and well-functioning service models.

The USPTO has unique needs that are critical to the patent application examinations it conducts, and that are unlike the needs of other agencies. The USPTO requires stable, secure systems that will work correctly for users not only within the office, but also for patent and trademark applicants and owners outside the office. It receives large volumes of confidential data from patent applicants and must be able to provide both the applicants and agency employees access

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to these data through a system of rule-based access controls. Additionally, the USPTO relies on a geographically-dispersed workforce that requires 24-hour remote access to agency servers and applications in order to maintain production levels. The needs of the USPTO would likely not be met by one of “a few models that can cover the majority of Federal use cases.” Draft Report at 21.

IPO is also concerned about the Draft Report’s focus on “migrat[ing] from legacy offerings to take advantage of the increased productivity and innovation that [vendor-operated, cloud-based] shared services offer.” Draft Report at 19. Although many agencies might be in a position to migrate in the near future, agencies like the USPTO remain reliant on fragile legacy systems. Unintended disruption of these legacy systems could negatively impact production at these agencies, with tremendous potential costs to agency customers who rely on around-the-clock availability of the systems.

To address these concerns, we recommend that ATC develop criteria for identifying and exempting agencies, like the USPTO, that are not good candidates for participating in shared services initiatives. The factors discussed above might provide a helpful starting point for determining which agencies should continue to provide their own IT services internally. IPO would gladly assist in developing additional criteria that could be included in the plan.

Legal considerations might preclude some agencies from participating in shared services. In its review of the relevant legal considerations in transitioning agencies to consolidated network infrastructures or shared services, the Draft Report overlooks statutory limits on the use of revenues by agencies that are primarily or fully funded by private user fees. For example, the USPTO may only use the patent application fees it collects “for expenses of the Office relating to the processing of patent applications and for other activities, services, and materials relating to patents and to cover a proportionate share of the administrative costs of the Office.” 35 U.S.C. § 42(c)(3)(A). Especially where shared services initiatives involve high initial stand-up costs, there is a well-voiced concern that the fees collected by the agency would be used to subsidize other parts of the federal government in violation of the statutory limit on the use of fees.¹ IPO recommends that ATC update its overview of legal considerations to identify any statutory

¹ See Letter from Sen. Charles Grassley, Chairman, U.S. Senate Committee on the Judiciary & Sen. Christopher Coons, Member, U.S. Senate Judiciary Committee, to Hon. Wilbur Ross, Secretary of Commerce (July 6, 2017), available at <https://www.grassley.senate.gov/news/news-releases/grassley-coons-question-uspto-participation-commerce%E2%80%99s-%E2%80%9CEnterprise-services%E2%80%9D> (expressing concern that a shared services initiative at the Department of Commerce could “undermine the statutory protections specifically put in place to prevent USPTO fees from supporting other parts of the federal government”; asking whether an analysis “was conducted to show whether the USPTO would see an improvement of services and realize cost-savings from this initiative”; and noting that “USPTO stakeholders have raised concerns that instead of paying a proportionate share of the cost to create services that the USPTO knows it will use and will reduce its costs, the USPTO appears to be paying nearly a third of the costs for the entire initiative regardless of projected use or cost savings.”); see also Letter from Reps. Darrell Issa, Bob Goodlatte, Mimi Walters, Zoe Lofgren, and Suzan DelBene, U.S. House of Representatives, to Hon. Penny Pritzker, Secretary of Commerce, and Hon. Michelle Lee, Under Secretary of Commerce for Intellectual Property and Director, U.S. Patent & Trademark Office (July 18, 2016), available at <http://www.ipo.org/wp-content/uploads/2016/07/2016.7.19-Issa-Letter-to-Commerce-1.pdf> (stating that a “shared services program that requires a financial commitment could contradict th[e] mandate” that USPTO retain the patent and trademark user fees it collects.”).

provisions governing the use of agency-collected fees that would prohibit agency participation in shared services initiatives.

Thank you for considering IPO's comments. We welcome the opportunity to provide any additional input that would assist ATC in developing the final version of its report on federal IT modernization.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Lauroesch". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Mark Lauroesch
Executive Director